

In the
United States Circuit Court of Appeals
For the Ninth Circuit

UNITED STATES OF AMERICA,

Appellant,

VS.

WILLIAM L. SASSAMAN, Claimant of the
Gasoline Launch "CALYPSO," her boats,
tackle, apparel, furniture and cargo,

Appellee.

OPENING BRIEF OF APPELLANT.

JOHN W. PRESTON,
United States Attorney,
Proctor for Appellant.

Filed this.....day of August, 1915.

FRANK D. MONCKTON, Clerk.

By.....Deputy Clerk.

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STATEMENT.

This is an action in admiralty by the Government, praying a forfeiture of the gasoline launch "Calypso," her boats, tackle, apparel, furniture and cargo.

William L. Sassaman appeared and claimed a five-sixths interest in the vessel, and certain mortgagees likewise appeared by same counsel as intervenors.

The forfeiture is claimed under Section 10 of an Act of Congress commonly known as the Chinese Exclusion Act, being the Act of May 6th, 1882, as amended July 5th, 1884 (22 Stat. 58; 23 Stat. 115).

The undisputed facts are:

That the boat was seized in Monterey Bay on January 17th, 1914, while the boat was then actually engaged in unlawfully smuggling into the United States certain Chinese not entitled to admission.

The boat was manned and controlled at the time of seizure by Morris Pettenger, a part owner in the boat, as well as a partner in its operation.

The illegality of the acts of the boat are undisputed. Likewise it is uncontroverted that the said Pettenger actually was the master of the boat at the time of seizure.

It is also undisputed that he was the enrolled master of the boat.

He was also the only licensed engineer the boat ever had from the time of its launching in May, 1913, until its seizure some nine months afterward.

The issue raised by the claimant is that the acts of Pettenger were unauthorized and fraudulent as to him, and that he could not in law, be the master of the boat. This brings us to the question of master-ship of the boat.

FACTS.

FIRST: The boat was constructed under a preliminary agreement dated August 10th, 1912. (Trans., p. 119, and Claimant's Exhibit "A.")

The terms of this preliminary agreement required that Pettenger put up one-third, and claimant Sassaman two-thirds, of the cost of the boat. The investment was then to be equalized and the parties were then to own each an undivided one-half interest in the boat. This agreement was *modified*, but not *abrogated*.

It is true that when the boat was launched, the interests were specified to be one-sixth and five-sixths respectively, but the agreement to operate upon a basis of equal profits remained, as also the agreement to equalize the amount invested.

As evidence of these facts, the original agreement was simply amended by the alleged new contract of December 23rd, 1913. Also Pettenger signed all obligations, such as mortgages, and notes, and was equally bound for their payment. Sassaman admits this:

Q. This \$3,400, is it on this boat?

A. The mortgage and Mr. Singleton's claim.

Q. \$3,400 of Singleton's, and how much is the mortgage?

A. I think there is a mortgage for \$425.

Q. How much, all told, over \$4,000?

A. Yes, sir.

Q. Is Pettenger equally liable with you on all this obligation? A. He is on that.

Q. He signed all the notes and mortgages?

A. He had to.

Q. He signed this agreement you made there with regard to Singleton? A. Yes, sir.

Q. And you are doing work for a creamery company now? A. I had been, yes.

Q. This indebtedness is represented by the joint obligation of you and Pettenger?

A. Yes, sir.

Q. How much of it was the agreement between you that Pettenger should pay?

A. We would pay this money as we got it.

Q. Out of the earning of the boat?

A. Yes, sir; and I was paying whatever I could.

Q. What was the understanding; you claimed $5/6$ ths?

A. I handled the money and I paid off whatever money I got. I paid this off as I got the money in. Pettenger got no money except what he needed to live on.

Q. For running the boat? A. Engineer.

Q. As the proceeds would come in they were to go to discharge these obligations?

A. Yes, sir.

Q. When the obligations were paid, what would be the ownership; what proportion of ownership?

A. He would get his proportion.

Q. How much? A. Whatever we made.

Q. Suppose that indebtedness has been paid for by the earnings of the boat, what would have been the interest of Pettenger in the boat?

A. The same interest.

Q. Equal interest with you?

A. Not unless he paid the back money, that would equalize the partnership.

Q. You mean you got $5/6$ ths and he got $1/6$ th?

A. If he worked with me I would give him one-half.

Q. He was to have one-half after it was paid up? A. Yes, sir.

Q. He was to give his time for his actual running expenses? A. Yes, sir.

Q. And after the thing was all paid up half the proceeds would be his and half would be yours? A. Yes, sir.

(Trans., pp. 129-130).

Pettenger in this behalf says:

Q. In the matter of profits, you had had some understanding late in the year 1913 along in November or some time about dividing the profits?

A. Yes, sir.

Q. Just what was that agreement?

A. I was to share half of the profits.

Q. That agreement was in writing?

A. Yes, sir.

(Trans., p. 155).

From the above it is clear that the parties were equal partners in the operation of the boat. Pettenger was putting in his time, taking only living expenses, and all the proceeds of the operation of the boat were to go to discharge the indebtedness against her, and then the profits were to be divided equally, and this was true whether Pettenger increased his interest in the boat or not.

SECOND: When the boat was launched, Pettenger became her licensed engineer and remained with her continuously from this date, which was May 22nd, 1913, until her seizure, January 17th, 1914. (Trans., pp. 150, 151. See Exhibit 2).

Sassaman on May 22nd, 1913, became the enrolled master of the boat. (Trans., p. 189 and Exhibit 3). The two men operated the boat as a passenger vessel, and there never was any agreement, verbal or written, to discontinue this use of her.

On July 2nd, 1913, Sassaman surrendered the mastership of this boat to one Oren H. Dickason, and he was not at any time thereafter the enrolled master of the boat. The mastership was transferred from Dickason to Lopez July 15th, 1913. On September 13th, 1913, one Castle received the license. (Trans., pp. 189-190). This man Castle was only hired by the trip and left in a very few days. Fox testified about Castle as follows:

Q. Do you know a man named Castle?

A. I do.

Q. What was he?

A. He was captain of the boat for two or three days only.

Q. What became of him?

A. He has gone to Great Falls, Montana.

Q. Do you know who procured him to become captain of this boat?

A. I could not say as to that.

Q. He was only there for a few days?

A. I think so.

(Trans., p. 110).

Sassaman knew, of course, that he himself was not the enrolled master of the boat. He knew that Castle was simply hired by the trip, and that he had left the employ of the boat. This man must have left in September or October. The boat was then

engaged actively in business as claimant admits. Who, pray tell, did he think was the master of the boat?

Sassaman gave evasive and unsatisfactory answers to questions touching the mastership, and as I interpret it, he admits he was not the master of the boat and claims merely that he was the managing owner and could, if he willed it, name the master. Here is his testimony:

Q. Did you ever see this paper here introduced in evidence as U. S. Exhibit 3?

A. Yes, sir.

Q. Did you get it? A. Yes, sir.

Q. What did you do with it?

A. I put it on the boat.

Q. Who is this man here, Oren H. Dickason?

A. He was once employed in my place.

Q. Did you surrender the mastership to him. A. Yes, sir.

Q. I believe you stated that you did surrender the mastership of this vessel on July 2d, 1913, to Oren H. Dickason? A. Yes, sir.

Q. You knew, didn't you, that Mr. Dickason surrendered the mastership of the vessel to Ralph L. Lopes?

A. I was present when he surrendered it to Lopes.

Q. Were you also present when Lopes surrendered it to Castle? A. Yes, sir.

Q. Who did you think was the master of the vessel when Pettenger took it out?

A. Castle was supposed to be the master.

Q. Where is Castle?

A. He is down in San Pedro.

Q. Was Castle in your employ?

A. Yes, sir; he was.

Q. When did he go out of your employ?

A. He never went really out of my employ, as far as the papers show.

Q. When did he go off your payroll?

A. I do not know the date.

Q. About when? A. I cannot say.

Q. Was he on your payroll in October, 1913?

A. I do not know the date; I would have to look it up in my books.

Q. Do you know whether he was on your payroll in 1913 or 1914? A. 1913.

Q. Was it before or after Christmas?

A. Before.

Q. In the month of December, or before?

A. I cannot state the time; I cannot state the date; I am sworn to tell the truth; I have no dates.

Q. Give us the month. A. I cannot.

Q. Give us your best impression as to when it was.

A. That would not be the whole truth; I cannot state it.

Q. We are not asking for the whole truth.

A. I am sworn to tell the whole truth, and nothing but the truth.

The COMMISSIONER: Q. Come as near as you can to it.

A. What is the question?

MR. PRESTON: Q. Give us your best recollection as to when this man Castle went out of your employ or the employ of the owner of the "Calypso?"

A. All I can explain to you gentlemen is, Castle was employed, but he did very little work.

The COMMISSIONER: Q. Do you know when he went out of your employ?

A. He was paid for every trip he went out.

MR. LLOYD: Q. Paid by the trip?

A. Yes, sir.

MR. PRESTON: Q. When was the last trip?

A. I cannot state, unless I look it up in my book.

Q. Could it have been in the month of October?

A. It might have been.

Q. That was probably the last trip?

A. That is close; it may have been in October, the last trip.

Q. Who did you think was the master of the vessel after he quit going out in her?

A. After he quit?

Q. Yes.

A. He was still master; there was no transfer.

The COMMISSIONER: That is your conclusion.

The WITNESS: That is the record in the customhouse.

MR. PRESTON: Q. The man must have left your employ some time or other? A. Yes, sir.

Q. Who became master after he left?

A. I was master when I took her out.

Q. Are you master? A. Yes, sir.

Q. You mean you could become master, or you are master? A. I am master.

Q. I thought you said a while ago that Castle was master?

A. I could take it from him at any time as managing owner.

Q. I thought you said that Castle was the master?

A. I was at any time I preferred to be.

Q. The upshot of it is you could become master, but you had surrendered it?

A. Castle had it; I acknowledged that before.

(Trans., pp. 131-134).

**Did Sassaman Know That Ship's Papers Showed Pettenger
to Be the Master of the Vessel?**

Sassaman knew that he was not the enrolled master.

He also knew that Castle was only paid by the trip.

He also knew that Pettenger was operating the boat in the harbor for hire.

He also knew the provisions of the Motor Boat Act of June 9, 1910, 36 Stat. 463, if not Revised Statutes 4426, to the effect that the boat could not be navigated without a licensed officer.

He also knew where the ship's papers were kept. He and Pettenger each had keys to the box.

He also knew that Pettenger was using brass polish on the boat.

He also saw the boat at least twice a week.

He also knew that Pettenger had bought life rafts for the boat.

He even knew that Pettenger had placed his own license in the pilot house and had taken his (Sassaman's) to some other place in the boat.

How can this be true and he be ignorant that Pettenger was the master of record as well as in fact

of the boat? Pettenger testifies positively that he told him about it and considered that he had the right to have the change in the papers made.

Q. The last endorsement on this change of master, on the back of this certificate, is November 24th, in which you are signed up as master; taking the place of Mr. Castle. When you were signed up as master, how long had Mr. Castle been gone?

A. Possibly a week, just a few days.

Q. When you went down there, you produced this, and did you call attention to the fact that you were one-sixth owner of the boat?

A. Mr. Stoecklin knew I was. I was acquainted with him, in a business way.

Q. Was there any hesitation on the part of Mr. Stoecklin?

A. No, sir; he asked me whether I had a right to do it, and I took the oath that is required by law.

Q. Did you have a talk with Mr. Sassaman at any time later, and inform him that you were signed up as master?

A. A few days later, yes; possibly about a week.

Q. About a week later? A. Yes, sir.

Q. You told him that you were signed then as master? A. Yes, sir.

(Trans., p. 153).

Q. Affecting you or affecting the vessel. You know that when you went and had yourself entered on the ship's papers as master, that Sassaman did not know about it, don't you?

A. Sassaman?

Q. Sassaman.

A. He did not know at the time.

Q. He did not know that at the time?

A. Yes, sir; but you understand I was the manager; I believed I was acting within the

law, and had the right to transfer those papers, as I was a part owner of the boat.

(Trans., pp. 158-159).

Also, the alleged agreement contains the following language:

“It is also agreed that I, Morris Pettenger, shall not employ a crew without a permit from Wm. L. Sassaman, and under no circumstances shall the ship’s papers be transferred to anyone except *by* Wm. L. Sassaman.”

(Trans., p. 175).

from which it is easily inferred that Sassaman had not the master’s papers, and knew that Pettenger had them.

We submit that it is contrary to human reason, as well as common sense, to say that Sassaman did not know that Pettenger was using the boat and acting as its master.

Key to Sassaman’s View Point.

A careful study of Sassaman’s testimony will show a practical admission on his part that he did know that the boat was being taken out by Pettenger. I refer to Sassaman’s use of the word “trip.” He interprets this word “trip” to mean voyages outside of the harbor. The contract of December 23rd, 1913, that Sassaman says he wrote, uses this language: “* * * I, Morris Pettenger, agree to make no contracts or take the ‘Calypso’ out on any *trip* without a permit from Wm. L. Sassaman.”

(Trans., p. 175). That Sassaman interpreted the word "trip" as above, is evident from the following quotations from his own testimony:

Q. Could she have gone out before that without your instructions?

A. Only in the harbor; she could not make a trip.

Q. Did she make a trip?

A. No, sir; the creditors would not allow her.

Q. Did she? A. She did not.

Q. You know that of your own knowledge?

A. I do.

Q. She never made a trip from the time Castle went out until the 23d day of December?

A. Yes, sir.

(Trans., p. 135).

Q. The boat was taken out at other times?

A. Yes, sir.

Q. Did he ever charge anything when he took the boat out?

A. He told me that he had in the harbor.

Q. How far?

A. Simply in the harbor, within a mile or so.

Q. He got some pay?

A. He told me afterwards that he did and kept it.

Q. How much did you get? A. Nothing.

Q. How did you expect to pay the indebtedness of this boat if you were not going to run her?

A. We were waiting for Catalina to open this time.

Q. You were not going her until Catalina opened?

A. Just special parties.

Q. In October or November, you would not run her?

A. The creditors would not allow it; we were going to run her in the harbor.

(Trans., p. 137).

Pettenger's Testimony.

The whole case at bar as I view it, rests upon the proposition as to whether the circumstances admitted and the admissions of Sassaman, when coupled with the testimony of Pettenger, make out a case of forfeiture.

It is contended that Pettenger cannot be believed. It must be recalled that he was reliable enough for claimants to first take his deposition in this case. (Trans., pp. 55 to 59).

Pettenger's loyalty to Sassaman is demonstrated out of the very mouth of Sassaman, who in direct examination admits that Pettenger said to him in referring to this Chinese smuggling episode: "I took a chance to help you; I realize you did a whole lot. I took a chance to make some money to pay Singleton." (Trans., p. 186-7).

Again Sassaman says: "* * * I understand this much if I am allowed to say so, that Pettenger did try to help me out this way which he said he did." (Trans., p. 187).

Pettenger went with Sassaman to an attorney and also talked with Sassaman at his request three or four times after his arrest. Why should he perjure

himself against Sassaman? How can Sassaman in conscience call him a falsifier even to the extent of stealing? The trip, had it been successful, would have netted them \$3400.00, the exact amount of indebtedness against the boat. Would Sassaman then have claimed his part of the money? (Trans., p. 107). Why should Pettenger take a chance like this alone?

Pettenger and Sassaman both underwent a personal examination on the witness stand before the United States Commissioner. The case rested upon which one the Commissioner would credit. Pettenger like a man, told the truth and in my judgment it would be a palpable miscarriage of justice to whitewash Sassaman and condemn Pettenger, when in my sincere judgment Pettenger is the worthier of the two.

Can it be conceived that Sassaman could have kept such intimate connection with the boat and then be totally ignorant of what was going on? In broad daylight mechanics worked to change the hatchway so as to stow the necessary oil and fuel for the trip. In the open market \$115 worth of oil was purchased and prior thereto an unsuccessful effort was made to buy supplies at other places.

The Federal officer's attention was attracted, and the boat kept under surveillance for some two or three days prior to her departure. Where was Sassaman during all this time? He loudly contends he was at work. So was Pettenger. Pettenger had

given his time entirely to the boat and had also no other work. What does Pettenger say?

Q. Did you have any conversation with Mr. Sassaman about a trip to Mexico, or about any project of going to Mexico?

A. I did after Christmas.

Q. After Christmas? A. Yes, sir.

Q. Just what did you say to him, what was the nature of this conversation with Mr. Sassaman about going to Mexico?

A. It was on the 26th of December, I was in the city, and I saw Mr. Sassaman, and I told him that Fox had a proposition on for Mexico, and he wanted—we did not go into the details of it; he wanted to know if there was any money in it. I says “Yes.”

Q. You had already told him you had signed as master of the ship?

A. Yes, sir; he knew I was. There was not anything mentioned at that time whose name was on the ship’s papers.

(Trans., pp. 153-154).

Q. What did you say to Mr. Sassaman about running down there? What you would do about sending the ship down there; was there anything further said?

A. He did not want to go. He proposed I should go. I says, “Are you willing to put your interest in the boat up against my liberty?” He says, “Yes.” He says, “Go ahead and use the boat and get some money in.”

Q. What I understand you to say now with reference to that, you put up your liberty against his interest?

A. That is it.

Q. Did he know, had you talked over what the object of this trip was?

A. I told him it was a chance proposition; I did not mention any Chinamen, or anything like that.

Q. He said, "Go ahead?"

A. Yes, sir; he said, "Go ahead and use the boat and get some money in."

Q. When you asked him to run the boat himself, he said, "No, you do it?"

A. Yes, sir.

Q. Is that it? A. Yes, sir.

(Trans., pp. 154-155).

Now is not this a reasonable proposition? Here was the boat in debt and no apparent way of paying it out. Of course Singleton would not consent to an illegal voyage. So isn't it perfectly natural that desiring money, and knowing the situation, Pettenger should mention it to him? Pettenger is trusted by Sassaman in these other matters, why not believe him here?

It may be said that Pettenger expected a lenient sentence for this story. Pettenger had already entered his plea of guilty. His companion had already been sentenced and what Pettenger told was with a full knowledge that his punishment would in no wise be affected by his testimony. Moreover, Pettenger had already given a deposition for Sassaman, and why did not Sassaman ask him about this question of consent so vital to his defense in this case? Pettenger told the truth, and had he told it sooner Sassaman would and should have been prosecuted. Pettenger said he was being shadowed, and did everything in his power to shield Sassaman. (Trans., pp. 164-5).

I think this Court ought to believe Pettenger and that the circumstances show that if, had he desired

to injure Sassaman, he could have done so in a thousand times more effective manner by telling the authorities in time to have prosecuted Sassaman with the others. In my judgment Sassaman is extremely fortunate that he was not indicted with the others.

But it is said that in his deposition at Los Angeles, Pettenger testified at variance with his testimony before the Commissioner in this, that he said in the one place that after signing the agreement on December 26th, 1913, he did not see Sassaman, and before the Commissioner, that he talked to Sassaman after signing the document. The witness says the conversation occurred the same day the paper was signed, and within one hour thereafter.

This in my judgment, is no contradiction. Any person perfectly truthful could give both answers. The *day* was in his mind in making the first answer, and the *time* of the day, or the number of visits on each day was not specifically called to his attention. Pettenger also testified that he was in a great hurry at the time the deposition was signed. (Trans., p. 168).

Now these are the salient facts relating to Sassaman's knowledge of what was going on, as well as his implied ratification of Pettenger's acts in using the boat. Against this is Sassaman's denial and the agreement of December 23rd or 26th, 1913. I doubt most seriously the existence of such agreement at

any time prior to the unlawful acts complained of. But assuming it to be genuine, it uses the word "trip" in a special sense, to wit, voyages outside of the harbor, thus ratifying Pettenger's use of the boat inside of the harbor, and also corroborating the fact that Sassaman must have known of the ship's papers being in Pettenger's name and lastly the contract provides for Sassaman's consent which Pettenger says he had.

And it just now occurs to me that if Sassaman was innocent, why was not Pettenger asked in his deposition when taken by Sassaman as to whether he had sought Sassaman's consent to the trip? He certainly was at all times friendly to Sassaman and anxious to shield him. Sassaman knew that he dare not ask that question, yet it was at the foundation of his whole claim and so appeared in his answer.

The Commissioner, a trained jurist, a close student of human nature, a man who sits in judgment on the credibility of witnesses, almost constantly, a man to whom all issues were referred, a man who says (Trans., p. 188) that he had examined Pettenger thoroughly and who had heard Sassaman's testimony twice orally and once by deposition, found the facts to be as follows:

That said Morris Pettenger was the master of said vessel as alleged in the libel, and that said Morris Pettenger was acting as master of said vessel and did the acts informed of in the libel at the time he was the master of said ves-

sel, and acting as such, and during all of said times informed of in the libel, the said Morris Pettenger was acting with the consent and knowledge of claimant, Wm. L. Sassaman, but without the knowledge or consent of the intervenor Wm. H. Singleton.

And in this behalf, I further find, that at the time of the voyage alleged in the libel, and at the times of the acts informed of therein, the said vessel was not stolen from Wm. L. Sassaman, or any other person, but the said vessel was, at all times during said voyage informed of in the libel, being navigated by Morris Pettenger as master thereof, with the knowledge and consent of the said claimant, Wm. L. Sassaman.

(Trans., pp. 200-201).

The trial court, without the benefit of the demeanor witnesses, found as follows:

The finding of the court will be that on the trip in question Pettenger was again acting without the knowledge and against the will of Sassaman; that Sassaman had no knowledge of his enrollment as master; that as against Sassaman, he was not such master within the meaning of the law, and that consequently the interest of Sassaman cannot be condemned.

(Trans., p. 233).

Now the final point is, what shall this Court say, who sits also in judgment on the facts?

LAW.

The statute is as follows:

“Sec. 10. That every vessel whose master shall knowingly violate any of the provisions of this act shall be deemed forfeited to the

United States, and shall be liable to seizure and condemnation in any district of the United States into which such vessel may enter or in which she may be found." 1 Fed. Stat. Anno. 782.

The power of this court in an admiralty appeal is as follows:

"Prior to the passage of the act of March 3, 1891 (26 Stat. 826, c. 517), creating the circuit court of appeals, it was well established that on an appeal in admiralty from a district court to a circuit court the cause was to be tried anew, as if no decree had been rendered. In *Ycaton v. U. S.*, 5 Cranch, 281, 283, 3 L. Ed. 101, Chief Justice Marshall said:

'The majority of this court is clearly of opinion that in admiralty cases an appeal suspends the sentence altogether, and that it is not *res adjudicata* until the final sentence of the appellate court be pronounced. The cause in the appellate court is to be heard *de novo*, as if no sentence had been passed. This has been the uniform practice, not only in cases of appeal from the district to the circuit courts of the United States, but in this court also.'

In *The Lucille*, 19 Wall. 73, 22 L. Ed. 64, the court, speaking by Mr. Justice Miller, said:

'An appeal in admiralty has the effect to supersede and vacate the decree from which it is taken. A new trial, completely and entirely new, with other testimony and other pleadings, if necessary, or if asked for, is contemplated—a new trial, in which the judgment of the court is regarded as though it had never been rendered. A new decree is to be made in the cir-

circuit court. This decree is to be enforced by the order of that court, and the record remains there. The case is not sent back to the district court for executing the decree, or for any other proceeding whatever, and that court has nothing further to do with it. The decree should therefore be complete within itself.'

In *Irvine v. The Hesper*, 122 U. S. 256, 266, 7 Sup. Ct. 1181, 30 L. Ed. 1178, Mr. Justice Blatchford, delivering the unanimous judgment of the court, said:

'The claimants not having appealed to the circuit court, it is suggested that they are liable for at least the amount awarded by the district court, and that the circuit court could not reduce that amount, but had jurisdiction, on the actual appeal, only to increase it. It is well settled, however, that an appeal in admiralty from the district court to the circuit court vacates altogether the decree of the district court, and that the case is tried *de novo* in the circuit court. We do not think that the fact that the claimants did not appeal from the decree of the district court alters the rule. When the libelants appealed, they did so in view of the rule, and took the risk of the result of a trial of the case *de novo*. The whole case was opened by their appeal, as much as it would have been if both parties had appealed, or if the appeal had been taken only by the claimants.'

See also, *The Charles Morgan*, 115 U. S. 69, 75, 5 Sup. Ct. 1172, 29 L. Ed. 316, and *The Louisville*, 154 U. S. 657, 14 Sup. Ct. 1190, 25 L. Ed. 771."

Gilchrist vs. Chicago Insurance Co., 104 Fed. 570. See also *The Nyack*, 199 Fed. 383.

Master Defined.

A definition of master is found in our Revised Statutes as follows:

“Every person having command of any vessel belonging to any citizen of the United States shall be deemed the ‘master’ thereof.”

R. S. 4612.

Of course I am in thorough accord with the construction that the word “command” is subject to the doctrine of the case of *United States vs. Wilton*, 43 Fed. 606. But it may well be observed that in that case the boat was actually stolen and all other statements in the opinion may be considered obiter dictum.

It certainly is not the law that criminal guilt on the part of Sassaman must be shown. The law clearly appears to be as stated in the case of *The Frolic*, 148 Fed. 923, as follows:

“It is well settled that under forfeiture statutes like the one in question the guilt or innocence of the owners of the property is immaterial.”

Dobbins Distillery vs. U. S., 96 U. S. 395,
24 L. Ed., 637;

U. S. vs. Stowell, 133 U. S. 1, 33 L. Ed. 555;

U. S. vs. One Black Horse, 129 Fed. 167.

I take it therefore that if Pettenger was not a trespasser on this boat that Sassaman could not

successfully resist forfeiture. And here again I emphasize the fact that Sassaman admits a limited use of the boat at least by Pettenger and also distinguishes the use of the boat in the harbor from the use of the boat in making "trips."

Now if it be admitted that the boat was being used in the harbor for hire I take it that the whole question of mastership is admitted for the law is as follows:

"All motor boats carrying passengers for hire shall carry one life-preserver of the sort prescribed by the regulations of the board of supervising inspectors for every passenger carried, and no such boat while so carrying passengers for hire shall be operated or navigated except in charge of a person DULY LICENSED for such service by the local board of inspectors."

Vol. 1 Sup. Fed. Stats. Ann. p. 40;

36 Stat. L. 463.

Sassaman knew that Pettenger was operating the boat and knew that Castle was gone and besides was only paid by the trip.

How could he be ignorant of the condition of the ship's papers?

We submit that the overwhelming preponderance of evidence is in favor of the Government and that judgment should be for the Libellant.

Motion to Dismiss Appeal.

This is an admiralty case in rem and not a criminal one and of course is appealable.

The Ben R, 134 Fed. 784.

Any further points urged in support of motion to dismiss will be replied to in our closing brief.

Respectfully submitted,

JOHN W. PRESTON,
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Proctor for Appellant.*

